



COMPLAINTS AND COMPLIANCE COMMITTEE

DATE OF HEARING: 24 MAY 2024

CASE NO: 475/2024

**MEDIA MONITORING AFRICA (MMA),
SOS SUPPORT PUBLIC BROADCASTING
COALITION (SOS); and
CAMPAIGN FOR FREE EXPRESSION (CFE)**

COMPLAINANTS

V

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LTD (SABC)**

RESPONDENT

CCC MEMBERS:

Judge Thokozile Masipa – Chairperson
Councillor Catherine Mushi - Member
Mr Monde Mbanga - Member
Mr Thato Mahapa - Member
Mr Paris Mashile – Member

FROM THE OFFICE OF THE CCC:

Meera Lalla - Acting CCC Coordinator
Thami Mtolo – CCC Assessor
Amukelani Vukeya – CCC Administrator

LEGAL REPRESENTATION FOR PARTIES

For the Complainant – Ms Justine Limpitlaw

For the Respondent – Adv Mfundo Salukazana

JUDGMENT

Judge Thokozile Masipa

INTRODUCTION

- [1] The Complainant in this matter is Media Monitoring Africa, the SOS Support Public Broadcasting Coalition and the Campaign for Free Expression.
- [2] The Complaint is submitted by MMA, acting for and on behalf of the SOS and CFE.
- [3] On 29 May 2024, the Democratic Alliance, a political party contesting the upcoming elections, on 29 May 2024, submitted its political advertisement ("PA") to the SABC for broadcast.
- [4] On 9 May 2024, the SABC decided to reject the PA for a number of reasons. The decision to reject the PA then became the subject of a complaint that was heard by the CCC on 17 May 2024. The reasons for the SABC's refusal to broadcast the DA's PA are not germane to this ruling. I say so for reasons which will become apparent in due course.
- [5] On 16 May 2024, the Complainants submitted their written complaint directly to the CCC. I issued directions for the matter to be heard in terms of regulation 6(6) of the National and Provincial Party Elections Broadcasts and Political Advertisement Regulations 2014 ("Regulations") on an urgent basis.
- [6] The SABC was directed to file its response by 21 May 2024 and the complainants to file their reply by 22 May 2024. The parties duly filed their respective papers and the matter was set down for hearing on 24 May 2024.
- [7] At the commencement of the hearing, the CCC raised a procedural question in respect of the *Locus Standi* of the complainant to file the complaints filed. The parties made their submissions on the issue.

[8] Since time was of the essence, the CCC took the decisions to reserve its decision on the *locus standi* of the complainants. The CCC proceeded to hear the submissions by the parties on the substantive issues and undertook to deliver a decision on the issue of *Locus standi* and, to the extent necessary, on the merits of the complaints. Although the CCC considered submissions on the both the procedural and substantive elements and the authorities referred to, for purposes of its decision it has confined itself to what is strictly relevant.

THE PARTIES

[9] The Complainant is the MMA, SOS and CF. The complainants are described briefly as follows:

- a) Media Monitoring Africa (MMA) – is a non-governmental civil society organization that has been monitoring the media since 1993.
- b) The SOS Support Public Broadcasting coalition (SOS) – is a civil society coalition committed to, and campaigns for, broadcasting services that advance the public interest; and
- c) Campaign for Free Expression (CFE) – is a non-profit company and a registered Public Benefit Organization that advocates for free expression for all and the rights of all to free and unfettered free speech and access to information.

[10] The Respondent is the South African Broadcasting Corporation, (“SABC”), a public broadcaster broadcasting nationally, which provides public broadcasting services as defined in section 1 of the Electronic Communications Act, 2005 (“the ECA and the Broadcasting Act of 1999 (“the Broadcasting Act”).

THE COMPLAINT

[11] The complaint concerns the decision by the South African Broadcasting Corporation SOC Limited (“SABC”) - a public broadcasting licensee in terms of the Electronic Communications Act 36 of 2005 (“the Act”), to reject a political advertisement by the DA.

[12] Prior to summarizing the complaint, it is apposite to mention the following:

- a) The DA submitted a complaint to the CCC following the SABC's decision to refuse to broadcast the PA. The complaint in the matter between the DA v SABC was heard on 17 May 2024 under case number 472/2024.
- b) The summary of the complaint brought by the DA against the SABC is set out in the CCC's judgement circulated to the Da and the SABC on 24 May 2024. Paragraphs 1 to 14 of the judgement sets out the factual matrix in respect of the genesis of the complaint. I shall incorporate those paragraphs herein by reference.
- c) The current complaint arises from the same refusal by the SABC to broadcast the DA's PA.

[13] The current complaint, in my view, is similar to that made by the DA against the SABC, save for supplementation of the arguments made by the DA, despite the insistence by the complainants that their complaint is different from that of the DA.

[14] The complaint is one made in terms of :

- a) Section 17B(a)(ii) and (iii) of the Independent Communications Authority Act, 13 of 2000, as amended ("the ICASA Act")
- b) Section 58(1) of the Act,
- c) Section 58(3) of the Act
- d) Section 59(1) of the Act;

[15] In paragraph 11.4 of the complaint, it is conceded that "*the complaint cannot be made in terms of regulation 7(1) of the Elections regs*". It is unclear on which basis then the complaint is submitted by the Complainant.

[16] It is for this reason, in addition to the fact that the CCC had already heard a similar complaint arising from the same facts, that the question of locus standi of the complainants arose.

[17] It is this specific element I now turn to.

LOCUS STANDI OF THE COMPLAINANT

[18] At the commencement of the hearing, the question arose whether there was a valid complaint before the CCC for adjudication. The question arose within the context of applicable regulations, in particular, the following provisions:

Regulation 6(6): A political party or an independent candidate whose PA has been rejected and disputes the rejection, and has no intention of altering or editing the advertisement, may refer the matter to the Authority within forty eight (48) hours of being informed of the rejection.

Regulation 7(1): In the event of any person being aggrieved by any PA or PEB that person may lodge a complaint with the Authority within five (5) days after such broadcast has occurred. (my emphasis).

[19] On a plain reading of regulation 6(6), the right to file the complaint in respect of the refusal to broadcast the advertisement is a remedy available to the political party or independent candidate, in addition to the other remedies it has, being the right to alter or edit the PA and resubmit such to the broadcaster concerned. Neither of the complainants are a political party or independent candidate.

[20] Similarly, on a plain reading of regulation 7(1), the right to submit a complaint is not limited in respect of the persons who may lodge a complaint. However, the circumstances under which a valid complaint may be submitted are circumscribed, being where such a complainant is aggrieved by a PA or Political electoral broadcast, **after such broadcast has occurred.**

[21] It was accepted by both counsel for the complainants and the respondent that regulation 7(1) cannot find application as there was no PA or PEB that was broadcast by the SABC and as such, there was nothing to aggrieve the complainants as contemplated in regulation 7(1).

[22] What remained, was whether the complainants were duly empowered by Regulation 6(6) to file the complaint.

[23] **In my view, the answer is a simple NO.** Regulation 6(6) of the Regulations carves out a remedy for the political party or independent candidate concerned. If it was the intention of the lawmakers for any interested party to be able to submit a complaint within the context of a refusal to broadcast a PA or PEB, the regulations would have provided explicitly so. This does not mean that the complainants may not submit any other complaints as allowed by the regulations.

[24] Of course, it cannot be gainsaid that at the time of the hearing of the complaint, the DA, being the political party concerned, had indeed filed a complaint with the CCC, which had already been heard.

[25] Whilst that actually raises another issue, which is the desirability or correctness of having multiple of parallel hearings in respect of similar complaints arising from the same facts, it is not necessary to remark thereon. Given the finding that the complainants did not have the *locus standi* to file the complaint filed, within the framework established by the Regulations, it would be improper to say anything further on this aspect. The issue was also not fully canvassed by either of the parties in their written and oral submissions nor was it canvassed by the CCC to any great detail.

SUBSTANTIVE ISSUES RAISED BY THE COMPLAINANTS

[26] Given the finding in respect of the *locus standi* of the Complainants, it is not necessary to go into the substantive issues raised, whether in the written or oral submissions.

[27] It is worth mentioning that the Complainant made several submission in respect of the mandate of the respective organizations and their public interest nature, especially in the context of the national election period.

[28] Even if the CCC is wrong in its finding that the Complainants do not have the *locus standi* in terms of the complaint filed as per regulation 6(6), the fact that the CCC has already received and heard the complaint by the DA against the SABC should be sufficient comfort that the regulatory framework is indeed functioning to protect the public interest which drives them.

[29] The remainder of the issues raised by the complainants have been dealt with in the DA Judgement referred to earlier and I am satisfied that all the issues raised by the complainants were adequately dealt with by the CCC.

CONCLUSION

[30] The National and Provincial Party Elections Broadcasts and Political Advertisement Regulations 2014, as amended are promulgated to give effect to sections 56, 57, 58 and 59 of the Act.

[31] Regulation 6(6) circumscribes who may be a complainant in respect of the refusal by a broadcaster to broadcast a PA, where the Broadcaster has accepted the obligation in terms of section 58 of the Act, in respect to the broadcasting of PA's.

[32] The complainant does not fit within the subset of persons allowed or authorized to file a complaint as contemplated in regulation 6(6).

FINDING

[33] Accordingly, the CCC finds that the complainants do not have the *locus standi* to file the complaint as presented, in terms of the provisions of Regulation 6(6) of the regulation. Consequently, there is not valid complaint before the CCC.

RECOMMENDATIONS

[34] The complaint is accordingly dismissed.

TMMasipa

27/5/2024

Date:

Judge Thokozile Masipa
Chairperson of the CCC